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Crystal Hammer

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON – PORTLAND DIVISION

CASE NO. 3:18-cv-00812

CRYSTAL HAMMER,

Plaintiff,

v.

Capital One, National Association, and  
DOES 1 through 100 inclusive,

Defendants.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Crystal Hammer an individual, based on information and belief, to allege as follows:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant’s violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

2. Plaintiff brings this action against Defendant Capital One, N.A. (hereinafter “Capital One”) for its abusive and outrageous conduct in connection with debt collection activity.

3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

4. The TCPA was designed to prevent calls like the ones described herein, and to protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give

1 consumers a choice as to how corporate entities may contact them and to prevent the nuisance  
2 associated with automated or prerecorded calls.

3 **JURISDICTION & VENUE**

4 5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §  
5 227.

6 6. This venue is proper pursuant to 28 U.S.C. §1391(b).

7 **GENERAL ALLEGATIONS**

8 7. Plaintiff Nancy Boyd (hereinafter “Plaintiff”) is an individual residing in the state of  
9 Oregon, and is a “debtor.”

10 8. At all relevant times herein, Defendant CAPITAL ONE engaged, by the use of mail,  
11 email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt.”

12 9. At all relevant times, Defendant acted as a “debt collector.”

13 10. Plaintiff had taken out an unsecured loan with CAPITAL ONE in approximately 2007.

14 11. The loan Plaintiff took from Defendant CAPITAL ONE was extended primarily for  
15 personal, family or household purposes and is therefore a “debt.”

16 12. Defendant CAPITAL ONE has been attempting to collect on a debt that originated  
17 from monetary credit that was extended primarily for personal, family, or household purposes,  
18 and was therefore a “consumer credit transaction.”

19 13. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant  
20 CAPITAL ONE arising from what Plaintiff is informed and believes was a consumer credit  
21 transaction, the money allegedly owed was a “consumer debt.”

22 14. Plaintiff is informed and believes that Defendant is one who regularly collects or  
23 attempts to collect debts on behalf of themselves, and is therefore a “debt collector.”

24 15. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the  
25 accounts.

26 16. Plaintiff began making payments on the loan before she became financially unable to  
27 keep up with the monthly payments.

28 17. Defendant CAPITAL ONE began contacting Plaintiff in January of 2018 to inquire  
about the status of the loan and to collect on the payments that were no longer being made.

1 18. Plaintiff retained counsel to assist in dealing with CAPITAL ONE debt and to seek  
2 some type of financial relief.

3 19. Counsel for Plaintiff sent the letter of revocation to CAPITAL ONE on or about  
4 March 1, 2018

5 20. Plaintiff believes her revocation and representation letter was received by Capital One  
6 on March 8, 2018.

7 21. Plaintiff informed CAPITAL ONE that she was revoking her consent, if it was ever  
8 previously given, to be called on her telephone in March of 2018.

9 22. Plaintiff was frustrated that Capital One continued to make unsolicited calls on her  
10 cellular telephone after contacting Capital One to revoke her consent.

11 23. Plaintiff denies she ever gave her express consent to be contacted on her cellular  
12 telephone by automatic dialing machines and pre-recorded messages.

13 24. Defendant CAPITAL ONE continued to contact Plaintiff between approximately  
14 March 9, 2018 – April 26, 2018; the type of contact was through phone calls to Plaintiff on her  
15 cellular telephone.

16 25. Despite notice being sent Defendant continued to contact Plaintiff on her cellular  
17 telephone regarding collection of her outstanding debt.

18 26. Capital One ignored Plaintiff's revocation letter and continued to contact her for at  
19 nearly two months following receipt of Plaintiff's letter.

20 27. CAPITAL ONE's calls were frequent in nature and continued despite receiving  
21 written confirmation that she was revoking any consent that may have been previously given to  
22 be called on her cellular telephone.

23 **FIRST CAUSE OF ACTION**

24 (Violation of the TCPA)

25 (47 USC § 227)

26 (Against Defendant and Does 1-100)

27 28. Plaintiff realleges and incorporates herein the allegation in each and every paragraph  
28 above as though fully set forth herein.

29 29. Since at least January of 2018 Defendant started calling Plaintiff's cellular telephone  
30 requesting that payment be made on the accounts Plaintiff held with Defendant.

31 30. Plaintiff informed Defendant that she was revoking consent to be contacted by  
32 CAPITAL ONE in March of 2018.

31. CAPITAL ONE continued to call Plaintiff frequently since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

32. Defendant would contact Plaintiff frequently regarding payment on the accounts.

33. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

34. Defendant contacted Plaintiff on at least 71 (seventy one) separate occasions after Plaintiff informed Defendant she did not wish to be contacted on her cellular telephone and withdrew any prior consent that may have been given.

35. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

36. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

37. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- b. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- c. Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an amount to be proven at trial.

Dated: May 9, 2018

By: **SAGARIA LAW, P.C.**  
/s/ Kyle Schumacher  
 Kyle Schumacher  
 Attorneys for Plaintiff

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of this matter by jury.

Dated: May 9, 2018

**SAGARIA LAW, P.C.**  
/s/ Kyle Schumacher  
 Kyle Schumacher  
 Attorneys for Plaintiff